IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.381 OF 2007
WITH
CIVIL APPLICATION NO.297 OF 2007

Kerba Shiva Shinde
(since deceased) through LRs
1a. Kalpana R.Dange & Ors. .. Appellants.
Vs.
Ramu Shiva Shinde & Ors. .. Respondents.

Mr.Uday Warunjikar for the appellants.

CORAM : D.B.BHOSALE, J.
DATED : 29TH AUGUST, 2007.

P.C.:

. Heard learned counsel for the appellants.

2. The concurrent findings of fact recorded by the courts below are under challenge in the instant second appeal filed by original defendant nos.1 to 3. Defendant No.3 is the purchaser, who claims that he had purchased the suit property from defendant no.2. It appears that in the earlier round of litigation this court vide order dated 1st December, 2004 in second appeal no.1215 of 2004 had remanded the matter to the first appellate court to decide the point whether defendant no.2 is bonafide purchaser of the suit property for value without notice. The appellate court on remand gave an opportunity to both the parties to be heard on merits and on the basis of

the evidence available on record has recorded its findings on the point in negative.

3. Mr.Warunjikar, learned counsel for the appellant raised two submissions, firstly, the appellate court after having found that the trial Court has not considered the issue of bonafide purchaser for value without notice in proper perspective ought to have remanded the matter to the trial Court, and secondly, inaction on the part of the plaintiff of non registration of lis pendens and taking care to protect his own property. He submitted that the courts below ought to have answered the aforesaid point in the affirmative.

4. The first submission is devoid of any merit. This court while remanding the matter vide order dated 1st December, 2004 after considering the findings recorded by both the courts below remanded it to the District Court and at that stage there was no request made by the appellant for remand to the trial Court. Moreover, merely because the findings recorded by the trial Court are not proper does not mean that the appellate court ought to have remanded the matter to the trial Court. Insofar as the second submission is concerned, the appellate court after remand has taken the entire evidence on record into

consideration and has recorded a categoric finding that defendant no.3 has not taken precaution which a genuine purchaser should take. It is rightly held that the transaction is hit by the provisions of section 52 of the Transfer of Property Act. Merely because lis pendens was not registered does not necessarily mean that the purchaser is a bonafide purchaser for the value without notice. The evidence on record clearly demonstrates that the finding recorded by the appellate court after remand are just and correct and need no interference by this court in the second appeal. The second appeal is, accordingly, dismissed. Consequently, the civil application is disposed of.

(D.B.BHOSALE, J.)